

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-vs-

18-CR-6091

ROBERT E. TILLARD,

Defendant.

Proceedings held before the
Honorable Jonathan W. Feldman,
Kenneth B. Keating Courthouse, 100 State
Street, Rochester, New York, on
December 12, 2018.

APPEARANCES:

KATELYN M. HARTFORD,
Assistant United States Attorney,
Appearing for the United States.

SONYA A. ZOGHLIN,
Assistant Federal Public Defender.
Appearing for Defendant.

AUDIO RECORDER: Lisa Duque

TRANSCRIBER: Michelle L. McLaughlin, RPR,
Court Reporter,
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(Proceedings recorded by electronic sound
recording, transcript produced by computer.)

I N D E X

WITNESS

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PETER MINURKA

Direct Examination by Ms. Hartford

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GOVERNMENT EXHIBITS

EVD.

1, 1A, 1B, 2, 3, 4, 5

39

1 THE CLERK: . . . Judge, Feldman
2 presiding. You may be seated. United States of
3 America versus Robert E. Tillard, 18-CR-6091-FPG.

4 THE COURT: Good afternoon. We're here
5 for a suppression hearing. I believe the
6 suppression hearing has to do with statements?

7 MS. HARTFORD: Yes, your Honor. And for
8 the record, we are taking Officer Minurka's
9 testimony here today here somewhat out of order.
10 The defense filings were due and I received them on
11 Friday of last week. The government's response is
12 not due until the 21st, with oral argument set at a
13 later date. However, due to the fact that Officer
14 Minurka, who is the lead officer during this
15 traffic stop and on that day, is under military
16 orders beginning on January 9th and through mid
17 May, we decided to take his testimony first. I'm
18 just stating that for the record. So this won't be
19 the entire suppression hearing. However, because
20 it was anticipated that this officer's testimony
21 would be an essential part of those hearings, we
22 are taking that today.

23 My understanding is that it is regarding
24 statements. Based on Miss Zoghlin's filings, she's
25 also challenging any evidence of taint after the

1 traffic stop as fruit of the poisonous tree, I
2 believe. Is that correct, Miss Zoghlin?

3 MS. ZOGHLIN: It has to do with both
4 statements and the tangible evidence, specifically
5 marijuana.

6 THE COURT: The marijuana was seized from
7 where?

8 MS. ZOGHLIN: The allegation is it was
9 seized from his person.

10 THE COURT: Okay.

11 MS. HARTFORD: So I will also be asking
12 Officer Minurka about the circumstances leading to
13 the attempted traffic stop and ultimate arrest of
14 Mr. Tillard.

15 THE COURT: Okay. And when does
16 Officer Minurka --

17 MS. HARTFORD: Minurka, M-I-N-U-R-K-A.

18 THE COURT: When does he return from
19 military duty?

20 MS. HARTFORD: Mid May, your Honor.

21 THE COURT: Okay.

22 MS. HARTFORD: His ship-out date I believe
23 is January 9th, which means that he will be
24 traveling to Georgia on January 8th. I did inquire
25 with him as to his availability prior to then. The

1 7th would be the absolute last date, but that is a
2 Monday. So to the extent we could do it before
3 then, great. But, of course, it's the government's
4 position that we'll do all today, but we'll see
5 what the Court decides.

6 THE COURT: Okay. Is there any objection
7 to taking the direct testimony of the officer
8 today?

9 MS. ZOGHLIN: No, not the direct
10 testimony.

11 THE COURT: Okay. And were you planning
12 on asking him anything about these allegations in
13 cross-examination?

14 MS. ZOGHLIN: Yes. I would say
15 tentatively, yes, although I don't have all the
16 information. So I think I need it to make a --

17 THE COURT: Right. I guess what I'm --
18 what I'm thinking is if you could -- if we had time
19 and you could start on your cross-examination, and
20 then I'd rule whether you would be able to continue
21 with specific documents. I don't know what
22 documents you're still missing. I guess we'd have
23 to get into that.

24 MS. ZOGHLIN: Yes. I could get into that
25 now.

1 THE COURT: Okay.

2 MS. ZOGHLIN: As the Court's aware, I did
3 send an email to Miss Hartford and with a copy to
4 the Court yesterday regarding some material that I
5 got very recently and some that I think I'm still
6 missing. Specifically, yesterday I got some
7 documents from a professional standards -- RPD
8 professional standards section review regarding --
9 based on a complaint made by Mr. Tillard
10 specifically against Officer Minurka. That
11 included several documents, including a lengthy
12 transcript of Officer Minurka's testimony.

13 Today I got a 50-page transcript of
14 Mr. Tillard's testimony. I don't --

15 THE COURT: Testimony was at a PSS
16 proceeding?

17 MS. ZOGHLIN: Yes.

18 THE COURT: Okay. When was the complaint
19 made and when was the hearing?

20 MS. ZOGHLIN: I can tell you that.
21 December 21st, 2017, appears to be the date of the
22 initial complaint. Mr. Tillard received an update
23 on February 9th saying that the investigation was
24 still in process. There was a hearing.
25 Mr. Tillard's testimony was December 21st, 2017,

1 and Officer Minurka's testimony --

2 MS. HARTFORD: February 13th, 2018.

3 MS. ZOGHLIN: February 13th, 2018.

4 THE COURT: And when was the decision
5 rendered on the PSS complaint?

6 MS. ZOGHLIN: I believe it was July 11th,
7 2018.

8 THE COURT: And so you have the
9 complaint --

10 MS. ZOGHLIN: I just got that today.

11 THE COURT: Okay. You have the hearing
12 testimony at least as far as both your client and
13 the officer?

14 MS. ZOGHLIN: I do. What I don't have
15 related to that is I'm not -- I don't know whether
16 it was videotaped. I see a document indicating
17 that Mr. Tillard agreed that it could be
18 videotaped. He is under the impression that it
19 was. I don't know that for sure, and I don't have
20 that videotape. And I also don't know what other
21 witnesses were called.

22 THE COURT: Do you have a copy of the
23 decision that was rendered?

24 MS. ZOGHLIN: I have a copy of a letter
25 that was mailed to Mr. Tillard. I don't know the

1 extent of the paperwork that's -- that's generated
2 based on this complaint. It's clear to me that
3 there's more. I don't know what more. But I do
4 have a letter that was sent to him.

5 THE COURT: Was Mr. Tillard present when
6 the officer testified?

7 MS. ZOGHLIN: No.

8 THE COURT: Okay. Do you know if either
9 of those testimonies were videotaped?

10 MS. HARTFORD: I don't know, your Honor.
11 I'm not in possession of video recorded testimony
12 for either. I am familiar with what Ms. Zoghlin is
13 saying in that I read -- I think it was in the
14 transcript -- I don't know if it was in the
15 transcript or in the advisement that is given to
16 the witnesses ahead of time asking if they would
17 consent to videotape. So to answer your question,
18 your Honor, I don't know if it was taped. If it
19 was taped, I'm not in possession of those
20 recordings. However, full transcripts of both the
21 defendant's testimony and the witness who's to
22 testify today, Officer Peter Minurka's testimony,
23 have been provided to the defense.

24 THE COURT: Who represents the parties at
25 these hearings?

1 MS. HARTFORD: Officer Minurka did have
2 representation. I don't know who it was, if it's a
3 union rep or an attorney, and I'm not familiar with
4 Mr. Tillard's representation at that time.

5 MS. ZOGHLIN: My understanding is he had
6 none. Certainly wouldn't have happened I think if
7 an attorney was aware of it.

8 THE COURT: Yeah. Who did the questioning
9 then?

10 MS. ZOGHLIN: The RPD sergeants. The one
11 of Mr. Tillard was Sergeant Laszlo Tordai and
12 Sergeant John Drew.

13 THE COURT: And who is the -- are they the
14 adjudicators or are they the judges?

15 MS. ZOGHLIN: I don't know. I do know
16 that -- well, a couple other things. From reading
17 the transcript it's clear -- several things are
18 clear. One is that there are also notes that were
19 taken, because there was an interview done with
20 Mr. Tillard before an interview that was on the
21 record. I don't have anything about that. I just
22 know that from reading the transcript and having
23 the questioner refer to notes. The questioner also
24 refers to photographs that he took that I don't
25 have.

1 THE COURT: And do you have the whole PSS
2 file?

3 MS. HARTFORD: I was under the impression
4 that I had the whole PSS file, your Honor. I
5 received it on Monday of this week. I did notice
6 as I was reviewing it and trying to prepare for
7 this hearing at the same time, but I did notice
8 that it mentioned the possibility that the hearing
9 could be recorded, and I don't have those
10 recordings. I did notice -- I don't believe that I
11 have the photographs, but I'm not sure, your Honor,
12 my review, I was trying to identify any statements
13 of the defendant and get those to the defense as
14 soon as possible, as well as any Jencks in advance
15 of today's hearing. So it was kind of triage in
16 trying to get those materials to the defense in a
17 timely manner. As far as doing a detailed review
18 of the file, I have not been able to do that at
19 this time.

20 THE COURT: The hearing that was conducted
21 deals with the relationship between the officer and
22 Mr. Tillard?

23 MS. HARTFORD: Yes.

24 THE COURT: Is there any question in your
25 mind that it would be relevant in terms of

1 impeachment evidence or Giglio material or Brady --
2 or potential Brady material?

3 MS. HARTFORD: Your Honor, I believe first
4 and foremost that it does not constitute Brady
5 material. I also don't believe that it constitutes
6 Giglio material. To the extent that these are
7 prior separate interactions, it may explain their
8 prior relationship. But as far as -- I haven't
9 seen anything that I believe would go to Brady or
10 Giglio.

11 THE COURT: Would it at all implicate the
12 officer's motive for interacting with Mr. Tillard?

13 MS. HARTFORD: There could be -- not in
14 what I've seen. I'm sure the defense would argue
15 that. So to the extent that that's an issue that
16 the parties disagree with, I would ask for the
17 Court to conduct an in camera review of the
18 materials and make that determination.

19 There is a law, a New York State Civil Rights
20 Law 50-a which in state court governs the
21 dissemination of this information. It's unclear
22 whether that applies in federal court or not.
23 However, in a brief review of the case notes,
24 following that there was a case out of the Southern
25 District of New York that said while it may or may

1 not apply, the federal courts typically will try to
2 honor the purposes, and I would ask --

3 THE COURT: That is the correct view of
4 the case law.

5 MS. HARTFORD: Okay.

6 THE COURT: However, that case law I
7 believe is probably with respect to civil rights
8 cases, civil cases.

9 MS. HARTFORD: Yes, your Honor.

10 THE COURT: So, I haven't had a 50-a issue
11 in a criminal case. My initial reaction is that
12 that privilege as it's known, the 50-a privilege
13 would not trump the constitution. In other
14 words --

15 MS. HARTFORD: I would agree.

16 THE COURT: -- if this material is
17 determined to be Brady or Giglio material, that the
18 CPLR or whatever the 50-a, I think it's the state
19 civil rights law -- I forget what section of the
20 law it is -- that that would not control or trump
21 the constitution if the material has to be turned
22 over. It seems to me though that the state
23 authorities are not balking at giving you access to
24 whatever material they have. Is that true?

25 MS. HARTFORD: That's correct, and I think

1 that that is partially because -- I had to file a
2 written request with certain language, of course.
3 And it may be because in 50-a it says that the
4 provisions of the section don't apply to any
5 district attorney, attorney general. It obviously
6 doesn't address the federal prosecution, but maybe
7 that's where that came from. But again, I don't --
8 I would feel most comfortable with the Court
9 conducting it if your Honor believes that it's
10 possible that there's Giglio material, which I
11 haven't heard the defense articulate a specific
12 basis of material that they're looking for. Just
13 sounds more like they want blanket everything to
14 see if they can find anything, almost more akin to
15 a fishing expedition. But I would be comfortable
16 with the Court reviewing these documents in camera
17 to weigh the state's interests with the defendant's
18 constitutional interests and make that
19 determination independently.

20 THE COURT: Well, let me ask this.
21 Everything you've had you turned over though,
22 correct?

23 MS. HARTFORD: Not in the PSS file, your
24 Honor.

25 THE COURT: Okay. What has not been

1 turned over in the PSS file? What types of
2 documents?

3 MS. HARTFORD: There are statements made
4 by other officers, testimony made by other
5 officers.

6 THE COURT: About their observations of
7 the interaction between the officer and
8 Mr. Tillard?

9 MS. HARTFORD: I'm not sure, your Honor.
10 I haven't read their transcripts yet.

11 THE COURT: Okay.

12 MS. HARTFORD: There are internal
13 memoranda written by the people involved in the
14 decision-making process. I haven't read those
15 either. There is -- there is one section -- and I
16 have this with me, and I am prepared to turn this
17 over to the defense. There's a section regarding
18 other incidents which has body camera footage and
19 reports. Those are RPD documents that I could get
20 independently outside of the PSS process. So to
21 the extent the defense is requesting those, again,
22 I don't think that they're relevant, because I
23 think that they are extrinsic to the case at hand.
24 I don't think that they go to truthfulness or bias,
25 and we can certainly ask the officer about that

1 during direct and cross, but it includes the
2 contents of this other incidents file that was in
3 the file that PSS gave me. So just for the record,
4 I'll hand that to the defense now. Those do exist
5 separate from the PSS file. But generally that's
6 my -- my understanding of what is in there.

7 Also the memoranda that were issued to officers
8 Minurka and Giancursio detailing the findings which
9 I think also are summarized in this letter that was
10 sent to the defendant which I believe the defense
11 already has. It was addressed to Mr. Tillard on
12 July 11th, 2018. (Indiscernible).

13 MS. ZOGHLIN: I do have that.

14 MS. HARTFORD: Okay. And I'll provide a
15 copy to the Court as well stating what was
16 substantiated, what was exonerated, et cetera.

17 My understanding as well, your Honor, some of
18 those documents underlying the findings would be
19 irrelevant, because once the officer is asked about
20 the one -- let's see, the one sustained complaint,
21 that is pertaining to use of body worn camera, his
22 answer is his answer. Extrinsic proof I don't
23 think would be permitted to get into the result of
24 that. That being said, I intend to ask him about
25 that on direct and expect him to say that it was

1 sustained and explain his understanding of that.

2 THE COURT: Miss Zoghlin, do you want to
3 be heard on any of this?

4 MS. ZOGHLIN: I do.

5 THE COURT: Okay.

6 MS. ZOGHLIN: I'll start first with the
7 last thing that Miss Hartford said. I
8 fundamentally disagree with the notion that
9 extrinsic evidence would not be permitted and that
10 I would be bound by his answer, because the
11 questions go to -- directly to his credibility and
12 specifically to his bias. And I do have a couple
13 examples of the Second Circuit reiterating the rule
14 that that type -- evidence that goes to those
15 issues is never collateral, and therefore extrinsic
16 evidence is admissible.

17 In terms of whether this is Brady or Giglio
18 material, what is in this transcript, in this
19 investigation is specifically about my client's
20 allegations that there was a pattern of harassment
21 starting approximately six months and culminating
22 in and including the arrest in this case. It is,
23 in my mind, quite clearly relevant, and it is also
24 in my mind exculpatory, at least potentially
25 exculpatory, because it goes to the officer's

1 credibility, both in terms of his testimony and
2 what we would argue is a pattern of harassment, and
3 I think it's also relevant that the officer in his
4 testimony before the professional standards section
5 conceded that he had stopped Mr. Tillard
6 approximately seven times in the six months leading
7 up to his arrest.

8 He also conceded that he had texted Mr. Tillard
9 directly from the officer's cellphone to
10 Mr. Tillard's cellphone at least twice leading up
11 to this arrest. He also --

12 THE COURT: What did the text say?

13 MS. ZOGHLIN: I'm sorry?

14 THE COURT: What did the text say?

15 MS. ZOGHLIN: The text said -- from my
16 memory, there's two of them. They're not very --
17 there's not much substance. There is I believe yo,
18 this is M, presumably from Minurka. And another
19 one that said what's up, I believe. Or something
20 to that effect.

21 THE COURT: And they're from Minurka's
22 official phone?

23 MS. ZOGHLIN: Personal cellphone.

24 THE COURT: Personal cellphone or --

25 MS. ZOGHLIN: Yes.

1 THE COURT: Okay.

2 MS. ZOGHLIN: Yes. To my client's
3 personal cellphone. And I don't believe my client
4 ever gave him the number or gave him permission
5 to --

6 THE COURT: What phone is it from Minurka,
7 his personal cellphone?

8 MS. ZOGHLIN: His personal cellphone, yes.

9 THE COURT: Have those texts been
10 preserved? Are you aware of those texts?

11 MS. HARTFORD: They've been presented to
12 the defense, your Honor.

13 THE COURT: Oh, you got them and presented
14 them to the defense?

15 MS. HARTFORD: Yes.

16 THE COURT: Pursuant to Brady?

17 MS. HARTFORD: I did just because it was
18 statements of the officer and -- I don't think
19 Brady. I don't think it's Brady, no.

20 THE COURT: Why is he texting him on his
21 personal phone?

22 MS. HARTFORD: As to why it's his own
23 personal phone? You'd have to ask the officer. I
24 don't know.

25 THE COURT: You never asked the officer

1 why he's communicating with the defendant on his
2 personal phone?

3 MS. HARTFORD: No. I know that he was
4 trying to develop the defendant potentially as a
5 cooperator, or there was discussion that the
6 defendant would work as a cooperator --

7 THE COURT: Okay.

8 MS. HARTFORD: -- is my understanding,
9 without classifying whether he agreed or when he
10 agreed. Because it sounds like the defense's
11 version of it is not what Officer Minurka's
12 understanding was.

13 THE COURT: And is that common to use your
14 personal phone? Is that part of Rochester Police
15 Department protocol to use --

16 MS. HARTFORD: I don't know, your Honor.
17 I do know that that came up in Officer Minurka's
18 testimony in front of PSS.

19 MS. ZOGHLIN: I believe the implication
20 that I got from reading that testimony in the
21 questioning was that the personnel -- the RPD
22 personnel who asked the question were surprised by
23 that answer, and assumed I think and asked a
24 question something to the effect of was that on
25 your snitch phone issued by the RPD, and he said

1 no, it was his personal cellphone.

2 MS. HARTFORD: I'm not sure if
3 Officer Minurka has an RPD phone. I don't know the
4 answer to that.

5 THE COURT: These the only two texts
6 between these two parties?

7 MS. ZOGHLIN: As far as I know, Judge,
8 yes.

9 THE COURT: Did your client respond to the
10 text?

11 MS. ZOGHLIN: He did not. In fact, my
12 understanding is he changed his number so that he
13 wouldn't be contacted. But I would have to talk to
14 him again to make sure I have the details correct.

15 THE COURT: Okay.

16 MS. ZOGHLIN: The other issue in terms of
17 why it's -- I perceive it to be Brady and Giglio is
18 that the officer was specifically asked in the
19 professional -- what is it called? Professional
20 standards section review basically about how he
21 felt about the situation. And he specifically said
22 I don't take kindly to it. I felt like -- I'm
23 upset that -- in terms of the situation it means
24 having been accused of these things. And he
25 essentially says that he's upset. He didn't take

1 kindly to it. He felt -- I felt personally -- he
2 didn't finish that sentence. I'm kind of upset
3 that I'm even here because this is -- because, you
4 know, this is outrageous, the allegations.

5 So, what I would submit along with what I
6 submit is a pattern of harassment and a bias
7 against Mr. Tillard is, if anything, the bias has
8 only increased since he's clearly indicated that he
9 was personally -- specifically personally outraged
10 that these allegations were made against him. I do
11 think he has a particular motive in this case to
12 justify his behavior.

13 It's also clear from his testimony that they
14 had the specific dates on which he interacted with
15 Mr. Tillard. He was able to say them by date. He
16 also referred to having reviewed the paperwork and
17 at least one instant having reviewed the body worn
18 camera of those previous incidents. So as I
19 referenced in my email to Miss Hartford that was
20 copied to the Court, I'm also asking for the
21 paperwork that -- regarding those incidents.

22 THE COURT: So the defendant's complaint
23 made to PSS was in December of 2017. And the
24 arrest was February of 2017?

25 MS. ZOGHLIN: Yes, February 25th, 2017.

1 THE COURT: The arrest occurred well
2 before the complaint occurred?

3 MS. ZOGHLIN: Yes. They actually ask
4 Mr. Tillard about that in his testimony.

5 THE COURT: When did these other six
6 incidents occur? What was the period of time?

7 MS. HARTFORD: Prior to the arrest, your
8 Honor.

9 MS. ZOGHLIN: The -- starting August 15th,
10 2016, October 3rd, 2016, November 2nd, 2016. Text
11 messages on November 22nd, 2016, and I believe
12 November 4th. Another interaction where he stopped
13 Mr. Tillard, November 9th, 2016, November 25th,
14 2016, December 19th, 2016, February 24th, 2017. In
15 other words the day before this incident. And then
16 this incident which was December -- I'm sorry,
17 February 25th, 2017. So it is approximately the
18 preceding six months.

19 THE COURT: And the allegation here is
20 that the defendant was stopped for the infamous
21 failure to signal a hundred feet before a turn?

22 MS. HARTFORD: He failed to signal a
23 hundred feet before the turn, and he also was
24 driving with a driver's permit, not a driver's
25 license.

1 THE COURT: He wouldn't know that until
2 after the stop was made, though.

3 MS. HARTFORD: Officer Minurka knew that
4 because of the stop the day before when he gave him
5 his driver's permit.

6 THE COURT: What was the stop the day
7 before for?

8 MS. HARTFORD: I'd have to double check,
9 your Honor. I believe it was odor of marijuana,
10 but I'd have to double check. Because, as
11 Ms. Zoghlin stated, there was a number of
12 interactions.

13 MS. ZOGHLIN: Judge, if we could just go
14 back for a moment to the discussion of the decision
15 that my client received. The decision is that
16 three allegations were unfounded or some form of
17 unfounded -- unfounded, exonerated, and unprovable.
18 But it also contains this paragraph. As part of
19 the session, a satellite issue was identified
20 pertaining to body worn camera usage by Officers
21 Minurka and Giancursio. The finding for the
22 satellite issue is sustained, which indicates that
23 it has been determined that the alleged act
24 occurred amounting to misconduct or misjudgment on
25 the part of the officer.

1 That's the entirety of the information we have
2 about the decision and what led to the decision.
3 So clearly there are -- I'm sure there's other
4 evidence, memos --

5 THE COURT: Is that in the PSS file?

6 MS. HARTFORD: Yes, your Honor, but I
7 don't think that the defense is entitled to that.
8 I don't think that it's relevant. I think that the
9 fact that he didn't use his body worn camera
10 properly, by the way, about 30 days or less after
11 it was first issued to him and had received minimal
12 to no training on it, he made a mistake as to how
13 and when to turn it on, doesn't go to bias, doesn't
14 go to truthfulness. I'm going to bring it up with
15 him on direct. It was a -- like a counseling
16 statement or a training statement essentially
17 saying you violated a policy and you need to read
18 up on the policy, and failure to do this correctly
19 in the future could result in disciplinary action.
20 That's essentially what it was.

21 THE COURT: Okay. Well, we'll see what
22 the cross-examination is on that and then I can
23 make a ruling as to whether any of the documents
24 would be producible.

25 MS. ZOGHLIN: Judge, are you talking about

1 cross examining now? Because I'm -- there are a
2 lot of documents that I feel would influence how I
3 structure my cross and what I ask on cross.
4 Clearly we know what he's going to answer. But
5 this issue with the body worn camera is -- I don't
6 know how far back it goes. I don't know how many
7 incidents there are. I don't think I should be
8 bound by his answer. There's been a specific
9 finding of either misconduct or misjudgment, and,
10 frankly, I don't think I should be bound by his
11 answer or Miss Hartford's summary of what she
12 believes these documents mean and how -- and
13 whether they're relevant. The body worn camera
14 issue also includes the arrest here, where
15 specifically --

16 THE COURT: So the body worn issue was
17 failure to turn on the body worn for this arrest
18 here?

19 MS. HARTFORD: That was my understanding,
20 your Honor. Again, I haven't done an in-depth
21 review of the whole PSS file at this time. I don't
22 know if it was just this day or other days. But I
23 did ask Officer Minurka if he's had any other
24 complaints, even, recording body worn camera since
25 then, and he indicated no complaints or obviously

1 findings since that incident. And again, this was
2 30 days after he received the body worn camera, so
3 certainly --

4 MS. ZOGHLIN: Certainly he's --

5 MS. HARTFORD: I'm sorry, may I finish?
6 Thank you, your Honor. So certainly not a lot of
7 time passed prior to that either, so --

8 THE COURT: But I could see a situation
9 where cross-examination could center on whether he
10 didn't turn the body worn camera on because he
11 wasn't trained or because he didn't want to record
12 what was being said between him and the defendant.

13 MS. HARTFORD: And certainly those
14 questions can be asked.

15 THE COURT: It could be asked, but it
16 would be interesting to know what the PSS found in
17 it.

18 MS. HARTFORD: Okay.

19 THE COURT: I think with respect to the
20 interaction between the defendant and Minurka on
21 the day of the arrest, that any PSS investigation
22 regarding that should be turned over. With respect
23 to other incidents, I guess I need more
24 information.

25 MS. ZOGHLIN: In part, of course, that's a

1 Catch 22 for me, because I don't have the
2 information. But he should have been -- his body
3 camera should have been on on every one of these
4 previous interactions.

5 THE COURT: But let's say they weren't on
6 at a previous interaction. How does that help you
7 in this case?

8 MS. ZOGHLIN: Because this is -- the
9 allegation is there is a pattern of harassment
10 leading up to this, and that the allegations here
11 against Mr. Tillard were made in response to their
12 previous interactions.

13 THE COURT: No, no. I guess if it was
14 with respect to a different defendant, would you
15 care if the body worn camera wasn't on?

16 MS. ZOGHLIN: I would, because -- well, I
17 can --

18 THE COURT: Wouldn't you just rather have
19 him not turn the body worn camera on when he
20 interacts with your client and turn it on for
21 everybody else, wouldn't that be better for you?

22 MS. ZOGHLIN: Well, Judge, I don't know,
23 because I don't have the information. But if, for
24 example, there is a pattern of him --

25 THE COURT: Wouldn't it be great for the

1 government if he didn't turn it on for everybody,
2 he's not singling out your client?

3 MS. ZOGHLIN: It may or may not. We know
4 actually that he did turn it on during one of the
5 previous incidents. So clearly, even though it's
6 brand new and he doesn't know anything about it, he
7 was able to turn it on before. And I don't --

8 THE COURT: I'd need a better argument as
9 to other defendants, what relevance it would be to
10 this case in terms of impeaching him in this case
11 as to whether he turned the body worn camera on.

12 MS. ZOGHLIN: Sure. I can conceive of --
13 you know, I don't know the whole world of
14 possibilities. But if, for example, there was some
15 pattern of him saying oops, I forgot to turn on my
16 body cam during times when it was critical that the
17 body cam be on and yet other times it wasn't, that
18 that would be relevant, whether it's Mr. Tillard or
19 anybody else. For example, in Mr. Tillard's case,
20 he doesn't turn his body camera on at all during
21 the pursuit -- when the traffic stop was initiated,
22 during the pursuit, or when he actually
23 interrogated him in the police car and didn't turn
24 it on. He then -- after Mr. Tillard's released
25 from state custody and the federal complaint is

1 filed, Officer Minurka is the one that goes and
2 arrests him. Body cam's on the whole time. I
3 think that's very relevant. I think if that's his
4 pattern with other people, that's relevant also.

5 And to the extent that he turned on the body
6 cam in the seven incidents leading up to this, I
7 think their interaction is also very relevant. My
8 assertion is that Officer Minurka has a bias
9 against Mr. Tillard, and that that led to what are
10 false accusations here.

11 The other issue I would say is what's the down
12 side to -- why shouldn't we know this?

13 THE COURT: Um-hum. Well, if it was a
14 civil discovery case I guess I'd probably agree
15 with you. But ironically, unfortunately, in
16 criminal cases discovery is very limited under
17 Rule 16 and constitution issues such as Brady.

18 But let me ask, how many of these previous
19 incidents involving the body wire cam involve
20 Mr. Tillard?

21 MS. HARTFORD: What do you mean, your
22 Honor?

23 THE COURT: In other words, with the seven
24 incidents that he had with Officer Minurka, was
25 there a body cam each of those seven incidents?

1 MS. HARTFORD: So again, Officer Minurka
2 had only received the body camera within 30 days of
3 this incident.

4 THE COURT: Are there any incidents --

5 MS. HARTFORD: Miss Zoghlin, where were
6 you getting those dates from, the transcript?

7 MS. ZOGHLIN: Yes. From Officer Minurka's
8 testimony --

9 MS. HARTFORD: Where was that?

10 MS. ZOGHLIN: -- the transcript. The
11 dates are throughout. He goes --

12 MS. HARTFORD: They're throughout. I'm
13 sorry, your Honor, I wasn't --

14 THE COURT: But what I'm getting at --

15 MS. HARTFORD: I think that most of those
16 interactions were outside of the time when he had a
17 body camera.

18 THE COURT: To the extent that he
19 interacted with Mr. Tillard while he had been
20 issued a body camera, I think the body camera tape
21 should be turned over.

22 MS. HARTFORD: And, your Honor, I believe
23 that I have turned that over to the defense,
24 because to my knowledge it was the -- I'm sorry,
25 one of them I had not been in possession of until

1 the PSS. And it's on the disc that I turned over.
2 That was the day prior to the arrest. The other
3 was the date of his federal arrest, which I had
4 previously turned over to the defense, which is
5 also incidentally on the PSS file. It's
6 represented to me that all the relevant body camera
7 footage is in the file on the disc that I turned
8 over to the defense today in court.

9 THE COURT: So to the extent there's any
10 body wire camera footage involving any incident
11 between the defendant and Officer Minurka, that
12 either has or will be turned over to the defense?

13 MS. HARTFORD: Yes, your Honor. And this
14 raises another point that I think it's important to
15 note as the defense is asking the day before the
16 suppression hearing for an adjournment for the
17 purpose of cross-examination, it is true that the
18 government provided Jencks material consisting of
19 Officer Minurka's testimony at PSS, in part, to the
20 defense yesterday morning, and that that would
21 reinforce things that the defendant and the defense
22 already knew, being that there were prior
23 interactions between the two of them, the dates
24 that that occurred, et cetera. The defense has
25 known about this since the pendency of this case,

1 which, by the way, he was arrested quite some time
2 ago, March 2017, and they're able to obtain a lot
3 of these -- now the PSS file, I do recognize that
4 the government is somewhat differently situated
5 than the defense with regards to that. But as far
6 as requesting body camera, requesting police
7 reports, incident reports, the defense has been
8 able to request those documents from the police
9 department since prior time, and to request an
10 adjournment at this point I think is kind of a last
11 minute thing. Yes, they came up again in the
12 testimony, but this is information that isn't new
13 to the defense. And the fact that there was a body
14 camera complaint that was deemed sustained, the
15 defendant has known about since July. In fact, the
16 defendant knew about that before I knew about that.
17 So, not that the comparison is relevant, I'm sorry.
18 But it's just -- this isn't necessarily news, and
19 again, to the extent I can turn over what I'm in
20 possession of, I've done that today. And the
21 transcripts that were turned over -- that I have
22 turned over that are part of the PSS file are those
23 that I identified as Jencks material or relevant
24 because they're statements of the defendant.

25 MS. ZOGHLIN: Judge, may I respond to that

1 assertion about the timing? I got that decision on
2 Monday. The decision that was apparently mailed
3 out in July. I was not aware of it until Monday of
4 this week.

5 THE COURT: Your client didn't get it?

6 MS. ZOGHLIN: I assume he got it, Judge.
7 But I wasn't aware of it.

8 MS. HARTFORD: I didn't --

9 MS. ZOGHLIN: If I could finish?

10 MS. HARTFORD: Yep.

11 MS. ZOGHLIN: The -- I think that's --
12 that argument has been pretty squarely addressed by
13 the Second Circuit. And specifically there's a
14 case entitled United States versus Vinas,
15 V-I-N-A-S, which was decided in December of 2018,
16 in which the government argued that the defense
17 should have known about statements, because,
18 obviously, the defendant knew he made the
19 statements. That argument was squarely rejected by
20 the Second Circuit. So in terms of a suggestion
21 that I somehow was -- didn't follow up on this as
22 quickly as I should have and I should have gotten
23 subpoenas for it, they knew that they -- maybe they
24 didn't, but they should have known. I got this
25 information -- I didn't know there was a

1 transcript. I didn't know there was a videotape.
2 I didn't know that there was a finding. So, that
3 is all new to me. They should have known about it.
4 I got my client's 50-page transcript today. So,
5 you know, I think that's, unfortunately, one of the
6 problems with taking things out of order -- and
7 which is why I'm requesting that we not do that.

8 THE COURT: Okay. So, let's do this
9 first. Let's make sure the government contacts the
10 appropriate state officials to make sure you have
11 all the information regarding these PSS
12 investigations. They've sent you the PSS file,
13 which is great, but we've heard information that
14 there may be videotape testimony or photographs or
15 any other information that was generated in the
16 course of the investigation. So, I'd ask the
17 government just to confirm that you have
18 everything.

19 Once you're satisfied that you have everything,
20 I'd like you to go through it all and determine
21 what you want to withhold. There may be
22 information in there which you have no objection to
23 releasing, either because you just don't object, or
24 you agree it could conceivably be Brady or Giglio
25 material or impeachment material or go to motive or

1 bias, and that should be turned over to the
2 defense. Then, depending on the amount of
3 information left over, and I don't want to
4 volunteer in camera inspection if it's going to be
5 12 banker boxes of information, to the extent you
6 don't want to turn something over, I'd like you to
7 do something akin to a privilege log that we use in
8 civil cases, which is describe the information in a
9 way that defense counsel could understand what's
10 being withheld, who wrote it, what the subject
11 matter is, without revealing the substance of it,
12 provide that log to the defense, see if you can
13 agree that something is so tangential that it
14 doesn't need to be turned over. And if there are
15 disagreements, the parties would submit that to me
16 for in camera inspection and determination. It's
17 akin to what I do in civil cases, but I think it's
18 a procedure that would work well here in addition.

19 I would like to, as long as the officer is
20 here, have Miss Hartford call the officer and
21 proceed with the direct examination, because, quite
22 frankly, what's said on direct examination may help
23 my in camera review if I ever have do it. And that
24 I would review -- I would rule on your request of
25 any disputed material before you were forced to

1 conduct a cross-examination, whether that would be
2 before January whatever it is that the witness is
3 leaving, or when the witness returns in May, I
4 can't guarantee that, because I don't know the
5 volume or how quickly you'll able to get the
6 information, or how quickly you'll be able to
7 review the log that the government's going to give
8 you. I'm not as concerned about the delay here
9 because it's my understanding the defendant's out
10 of custody, is that true?

11 MS. ZOGHLIN: Yes, it is.

12 THE COURT: Okay. So, I think that takes
13 a little pressure off of all the parties. Is that
14 a procedure all parties can live with?

15 MS. ZOGHLIN: Yes.

16 MS. HARTFORD: Yes, your Honor.

17 THE COURT: Okay. So, let's not waste
18 anymore time. Let's, if you're ready to bring
19 Officer Minurka in, and you can do your direct
20 examination.

21 MS. HARTFORD: Yes.

22 THE COURT: Cover whatever you want to
23 cover. I'm not limiting you in terms of your
24 questions as to what you want to bring out,
25 including things that you may want to kick the wind

1 out of the sails.

2 MS. HARTFORD: Sorry?

3 THE COURT: Including any information you
4 may want to use to take kind of the wind out of the
5 sails in terms of any potential impeachment or bias
6 information. You're free to question on whatever,
7 even things that have not been disclosed yet.

8 MS. HARTFORD: Thank you, your Honor. May
9 I just take a brief break before we begin?

10 THE COURT: Absolutely.

11 MS. HARTFORD: Thank you.

12 THE COURT: Five minutes?

13 MS. HARTFORD: That's more than enough
14 time.

15 THE COURT: Okay.

16 MS. HARTFORD: Thank you.

17 (Short recess was taken.)

18 THE CLERK: . . . presiding.

19 MS. HARTFORD: Your Honor, before we
20 begin, there's one point I want to mention that
21 came up in our discussion prior to the break.

22 THE COURT: Yep.

23 MS. HARTFORD: Ms. Zoghlin mentioned two
24 text messages from Officer Minurka to the
25 defendant, and I stated I thought I provided those

1 to her. I noticed she was looking around in her
2 materials as if I hadn't. So I just talked to her
3 about it during the break, and she's not sure if I
4 provided it, and I'm not -- actually not sure if I
5 provided it, because it was a one-page thing. So I
6 just want it to be clear on the record about that.
7 I don't recall. I'll make sure that she has it. I
8 mean, she does have it, but I'll make sure that I
9 provide the version that I have to her this
10 afternoon after the hearing. But her recollection
11 of what the messages constitute is my understanding
12 as well.

13 THE COURT: Okay. Great. All right.
14 Whenever you're ready, let me know, and we'll get
15 started.

16 MS. HARTFORD: Thank you, your Honor. The
17 government calls Officer Peter Minurka.

18 THE CLERK: Raise your right hand.
19 P E T E R M I N U R K A, having been duly sworn as
20 a witness, testified as follows:

21 THE CLERK: Thank you. If you'll take a
22 seat in the witness stand. State your name and
23 spell your last name for the record.

24 THE WITNESS: First name is Peter. Last
25 name is Minurka, M-I-N-U-R-K-A.

1 THE COURT: All right. You may proceed.

2 MS. HARTFORD: Thank you, your Honor. And
3 before we get started, just for the record, I do
4 have a number of exhibits. I did show them to the
5 defense beforehand and don't anticipate any
6 objections, but we'll still go through proper
7 procedure.

8 THE COURT: I have no objection if the
9 defense consents to just submit them now and you
10 can just use them freely.

11 MS. ZOGHLIN: That's fine.

12 THE COURT: Okay. So what numbers are
13 they?

14 MS. HARTFORD: It's Exhibits 1, 1A, 1B,
15 and then, 2, 3, 4, and 5.

16 THE COURT: Those exhibits are received in
17 evidence for the purposes of the hearing.

18 MS. HARTFORD: Thank you.

19 (Government's Exhibits 1, 1A, 1B, 2, 3, 4,
20 5 were received into evidence.)

21 DIRECT EXAMINATION BY MS. HARTFORD:

22 Q. Good afternoon, Officer.

23 A. Good afternoon.

24 Q. Could you please state your name?

25 A. Yes. First name is Peter. Last name is

1 Minurka.

2 Q. And where are you employed?

3 A. The Rochester Police Department.

4 Q. How long have you been employed with the
5 Rochester Police Department?

6 A. Approximately five years.

7 Q. And what is your job there?

8 A. As a police officer.

9 Q. Patrol officer? Are you with any special unit?

10 A. Specifically I'm a patrol officer. I'm
11 assigned to Genesee Section fourth platoon.

12 Q. And did you receive any training in order to
13 become a police officer?

14 A. I did.

15 Q. And what was that training?

16 A. Initial training began with the six-month
17 academy, followed by four months of field training.

18 Q. And did you receive any training in New York
19 State Vehicle and Traffic Law?

20 A. I did.

21 Q. When was that?

22 A. During the police academy.

23 Q. So that would have been in the beginning of
24 your employment?

25 A. Yes, ma'am.

1 Q. Or prior to I guess, I'm sorry.

2 A. Yes.

3 Q. What did you do before you were employed with
4 the Rochester Police Department?

5 A. I worked for the Monroe County Sheriff's
6 Office, jail bureau.

7 Q. And how long did you work with the jail bureau?

8 A. Approximately one year.

9 Q. I'd like to direct your attention to
10 February 25th of 2017. Were you employed with RPD
11 at that time?

12 A. I was.

13 Q. And were you a patrol officer -- did you say
14 Genesee division -- could you repeat that again?

15 A. Yes. I was working as patrol officer, Genesee
16 Section. During that time I was actually assigned
17 to third platoon.

18 Q. And what does that mean?

19 A. That means I work from the hours of 3:00 p.m.
20 to 11:00 p.m.

21 Q. And on February 25th of 2017, do you recall
22 becoming involved in an incident involving the
23 defendant Robert Tillard?

24 A. I do.

25 Q. And how did that come about on that date?

1 A. During that time I was working with Officer
2 Giancursio who works with the Rochester Police
3 Department as well. We were working as a two-badge
4 unit. I was driving, he was in the passenger seat.
5 During that time we were in the area of South
6 Plymouth, Edith Street. It's in the southwest
7 quadrant of Genesee Section. I directed my
8 attention to a nearby intersection, South Plymouth
9 and Doran, when I observed a tan Toyota Camry.

10 Q. Approximately what time of day was this?

11 A. Approximately 10:41 p.m.

12 Q. And what was the lighting and visibility
13 conditions like on that day at that time?

14 A. At that time it was dark and it was poor light
15 conditions on that side of the street.

16 Q. Showing you what's previously been marked as
17 Government Exhibit 1, are you able to -- if you
18 touch the screen, it should make a mark. Are you
19 able to point to where you were at the time?

20 A. Yes. As soon as I find -- okay. I was right
21 here.

22 Q. All right. It's not making -- there it works.
23 So there's a red dot at the corner of Doran Street
24 and what's that street --

25 A. Edith. So, if I tap on it, will it go back a

1 little bit further?

2 Q. I'll clear it for you.

3 A. Okay. So more specifically I was right there.

4 Q. So that would be on --

5 A. On Edith.

6 Q. On Edith Street. Okay. And please describe
7 what you saw.

8 A. Okay, during that time?

9 Q. Yes.

10 A. I saw a tan Toyota Camry parked in this area
11 here.

12 Q. Farther down Doran Street?

13 A. Farther down Doran Street. It was on the south
14 curb facing eastbound.

15 Q. Okay. Go ahead.

16 A. During that time a male black exited the
17 driver's side of that Toyota Camry. He was wearing
18 a black leather jacket, and appeared that he was
19 holding something in his hand as he was walking
20 towards the store at 700 South Plymouth, which is
21 that parking lot, if you continue to work north.

22 Q. Is that on this map?

23 A. You cannot see it. It's kind of cut off.

24 Q. Okay. Can you put a dot where that would be if
25 the map were to continue?

1 A. About right there.

2 Q. So is it fair to say the north side of Doran
3 Street just slightly off the map, the corner --

4 A. The northeast corner of Doran and South
5 Plymouth, yes.

6 Q. Okay. Perfect. Go ahead. So he was walking
7 in that direction?

8 A. Walking in that direction. Short time later
9 before he made it all the way across the street, he
10 just kind of turned around and walked right back to
11 that Toyota Camry and entered the driver's seat.

12 Q. All right. And what happened next?

13 A. At that point he pulled away from the curb at a
14 pretty high rate of speed. At that time I -- right
15 around the time he pulled away, I actually turned
16 to go the opposite direction westbound on Doran
17 Street, so that we were actually driving in
18 opposite directions passed each other.

19 Q. You were driving westbound on Doran Street and
20 this individual was driving eastbound on Doran
21 Street?

22 A. Correct.

23 Q. Were you able at some point to see who the
24 driver was?

25 A. I was.

1 Q. And what did you see?

2 A. At that point I was able to turn to see the
3 driver's face, identified him as Robert Tillard,
4 who I've known in previous encounters.

5 Q. Were you able to see if there was anybody in
6 the passenger seat?

7 A. Not at that time I did not.

8 Q. And did you know at that time whether
9 Mr. Tillard had a valid driver's license or not?

10 A. I was aware, yes.

11 Q. And what's the answer to that?

12 A. He had a New York State permit only.

13 Q. How did you know that?

14 A. Actually, the day before that I just conducted
15 a traffic stop and ran his driver's license,
16 determined so.

17 Q. And you determined at that time the day before
18 he only had a New York State learner's permit?

19 A. Yes, ma'am.

20 Q. So what happened next?

21 A. So he proceeded to -- I believe once he saw my
22 vehicle, he --

23 MS. ZOGHLIN: Objection.

24 THE COURT: You can only testify to what
25 you did, not what somebody else may have thought.

1 THE WITNESS: Okay. Sorry. He began to
2 travel at what I believe to be a high rate of speed
3 based on the distance that he had traveled from
4 that -- that curb to the end on Doran towards
5 Exchange. I then turned down southbound on
6 Plymouth to try to circle back around the
7 neighborhood to try to reacquire the vehicle coming
8 out of Exchange Street.

9 BY MS. HARTFORD:

10 Q. And were you able -- when you say reacquire the
11 vehicle, does that mean catch up with the vehicle?

12 A. Yes. Because I lost sight of it for a slight
13 time.

14 Q. Okay. Were you able to catch up with that
15 vehicle?

16 A. I was.

17 Q. Where were you -- can you draw a line on the
18 screen kind of the path that you took?

19 A. Yep. I went south on Plymouth, back eastbound
20 on Violetta, to Exchange.

21 Q. Okay. And at that point did you see the
22 vehicle that you saw Mr. Tillard driving?

23 A. I did.

24 Q. Where was it going?

25 A. It was driving south on Exchange Street.

1 Q. Okay. And where did you go at that point?

2 What happened next?

3 A. At that point I maneuvered my vehicle directly
4 behind him. As he started to come up to this Flint
5 Street intersection, again at this time he was
6 driving pretty eradicate and evasive, and continued
7 to drive pretty fast and come more to an abrupt
8 stop when he got to this intersection at Flint and
9 Exchange Street. At that point I was probably
10 about one to two car lengths behind him. Once he
11 made that intersection, it appeared that he wanted
12 to take a right-hand turn, so once he's in the
13 intersection he kind of did a swerving motion and
14 decided to take a last minute turn left to go
15 eastbound on Flint Street, and he then -- he
16 failed --

17 Q. Can I stop you here. So he approaches Flint
18 Street, stops, starts to turn right, and then turns
19 left, is that your testimony?

20 A. Yes.

21 Q. Okay. At any point during this maneuver, did
22 he use -- or before this maneuver, did he activate
23 a turn signal?

24 A. So simultaneously when he began to make that
25 right-hand turn, the vehicle was still in motion

1 more aiming to turn right, he then activated his
2 signal into the intersection, turned left, and then
3 actually made that movement left.

4 Q. So he was already into the intersection --

5 A. Correct.

6 Q. -- is that correct?

7 A. Correct.

8 Q. I'm going to ask this question. Was that more
9 or less than a hundred feet prior to when he turned
10 left?

11 A. That was less than a hundred feet.

12 Q. In fact, it was as he turned?

13 A. Yes.

14 Q. Okay. And what did you do when he turned left?

15 A. Right about that time is when I initiated my
16 emergency lights and activated my sirens to conduct
17 a traffic stop. I began to travel directly behind
18 him. He did not stop right away. He failed to
19 yield to my emergency lights, as he continued to
20 travel eastbound on Flint towards this dead end.

21 Q. Okay. And where did he -- did he eventually
22 stop his vehicle?

23 A. He did eventually.

24 Q. Where did he eventually stop his vehicle?

25 A. Right there.

1 Q. Now you've placed a dot on the screen. I'm
2 trying to read it into the record. Actually, you
3 know what I'm going to do, I'm going to have you
4 mark the actual Government Exhibit, because I think
5 it's hard to describe. So permission for the
6 witness to step down, your Honor?

7 THE COURT: Sure.

8 BY MS. HARTFORD:

9 Q. Come on down, Officer. If you could, please,
10 on Government's Exhibit 1 place an X where he
11 stopped his vehicle -- where the defendant stopped.

12 For the record, the pen is not working very
13 well.

14 THE COURT: Try this one.

15 MS. HARTFORD: Okay. Judge Feldman may
16 have a better one.

17 THE COURT: It's a felt tip.

18 MS. HARTFORD: Thank you. That will be a
19 little clearer than this ballpoint.

20 Thank you, your Honor.

21 THE COURT: Are you going to use more
22 marks? You might want to keep it.

23 MS. HARTFORD: Thank you. Would you like
24 my pen in the meantime?

25 THE COURT: No. I want mine back when

1 he's done.

2 MS. HARTFORD: Okay.

3 BY MS. HARTFORD:

4 Q. All right. Now, Officer Minurka, what happened
5 when -- so is it fair to say that the defendant
6 traveled this length of Flint Street with your
7 lights activated and sirens on and didn't pull
8 over?

9 A. That's correct.

10 Q. Okay. What happened next after he stopped his
11 vehicle?

12 A. As he stopped the vehicle, I observed the
13 driver's side door open quickly, and he exited in a
14 full sprint, fled from the vehicle.

15 Q. Okay. And can you indicate on the map where he
16 fled?

17 A. Yes. Can you see it?

18 Q. Yes.

19 A. Okay. So he fled around the side, so I guess
20 it would be considered to be east side of the
21 building.

22 Q. You say building, are you referring to this
23 small structure on the map?

24 A. Yes. It's a vacant shed. It's not very big.

25 Q. Okay.

1 A. He kind of goes around this east side of the
2 shed, and he continues to go southbound direction
3 this way.

4 Q. Okay.

5 A. He was very quickly after that -- he didn't
6 travel too much further because the brush --

7 Q. What do you mean the brush?

8 A. There was brush on the ground, like bushes.

9 Q. Okay.

10 A. And kind of impeded on the way where he would
11 be able to maneuver behind there.

12 Q. And what did you -- what did you observe during
13 this? Well, where were you at this time?

14 A. So at this time -- as soon as he exited the
15 vehicle, my partner Officer Giancursio did pursue
16 him on foot. At that point I did continue to drive
17 to about this area here prior to exiting my
18 vehicle.

19 Q. Okay.

20 A. Just thinking that he might try to come down
21 the path. And at that point I exited and actually
22 began running in his direction. I got to about
23 15 yards away from Mr. Tillard. He was illuminated
24 by the flashlight Officer Giancursio was using. I
25 kind of had a good view of him. Unfortunately, I

1 wasn't able to move too fast just because of the
2 brush on the ground. During that time I saw him
3 reach the front of his body and he like made a
4 throwing motion with his right hand towards the
5 western side. And shortly after that he was taken
6 into custody by Officer Giancursio. Sorry,
7 meanwhile when I was trying to do detention, I was
8 yelling get on the ground, on the ground, which I
9 believe was (indiscernible) and Officer Giancursio
10 taken into custody.

11 Q. Wait. Could you repeat that? Who was yelling
12 get on the ground?

13 A. I was yelling get on the ground.

14 Q. And what happened?

15 A. He --I don't know if it was like Officer
16 Giancursio assisting him to the ground or him
17 actually complying and getting to the ground right
18 at that point.

19 Q. All right. So you're not sure whether it was
20 compliance or force, but he got to the ground?

21 A. Right.

22 Q. Okay. And did you apprehend him?

23 A. Officer Giancursio.

24 Q. Okay. Thank you. Did you hear him make any
25 statements?

1 A. I did.

2 Q. Can you tell us about that, please?

3 A. Yes. When I was finally able to untangle
4 myself from the brush, he was still on the ground.
5 Just part way he was actually being assisted up, he
6 made statement to the effect of I ran because I had
7 weed on me.

8 Q. I ran because I had weed on me?

9 A. Something to that effect.

10 Q. Did you ask him any questions --

11 A. No, I did not.

12 Q. -- to get that response?

13 A. I did not.

14 Q. Did Officer Giancursio ask him any questions to
15 elicit that response?

16 A. I did not hear him do that.

17 Q. So you didn't hear Officer Giancursio ask him
18 anything?

19 A. No.

20 Q. Were there any other officers or any other
21 people in the area at the time?

22 A. Not at the time.

23 Q. I'd like to ask you a little bit about this
24 area. Can you describe the neighborhood that you
25 were patrolling in and where this took place?

1 A. Yes. Specifically that night we were in the
2 area due to the fact that there had been an
3 increase in violence, considered to be a high-crime
4 area, specifically that gas station at Summer and
5 South Plymouth. Probably at right now it
6 considerably gets one of the most 911 calls a day
7 for vice activity. Leading from that time even to
8 present day, actually now has been considered one
9 of our pop areas which we call for a pocket of the
10 city where we try to concentrate on for gun and
11 drug violence.

12 Q. Was it given that designation prior to or after
13 this arrest?

14 A. Somewhere around that time. I really can't
15 recall if it was before or after.

16 Q. So is it fair to say that this would be a
17 high-crime area?

18 A. Yes, ma'am.

19 Q. So did you take Mr. Tillard into custody?

20 A. Officer Giancursio took him into custody.

21 Q. Did you conduct a pat-down of his person or
22 somebody else?

23 A. Officer Giancursio did. I believe he escorted
24 him.

25 Q. But you didn't do that?

1 A. I did not, no.

2 Q. Okay. And did you originally locate the gun in
3 this case?

4 A. Officer Giancursio did.

5 Q. I don't want to ask you about what he did. We
6 can address that with him at another time.

7 A. Okay.

8 Q. Now, at some point did you attempt to conduct a
9 post-arrest interview of Mr. Tillard?

10 A. I did.

11 Q. Do you recall approximately what time that was?

12 A. I believe it was just before 11:00 p.m.

13 Q. And do you use an RPD notification and waiver
14 card in order to conduct that interview?

15 A. I do. I use notification waiver card 1185.

16 Q. Showing you Government's Exhibit 4, or a
17 copy -- or Government's Exhibit 4, can you identify
18 what this is, please?

19 A. Yes. This is waiver form 1185.

20 Q. And is this an original or a copy?

21 A. This appears to be the original.

22 Q. Sorry. I'm going to ask you to take a look at
23 the actual exhibit.

24 A. Oh, I didn't see on there, this is a copy.

25 Q. Is this the original card that you used or a

1 photocopy?

2 A. Photocopy.

3 Q. All right. Is it a fair and accurate copy of
4 the card that you used?

5 A. It is.

6 Q. Have there been any additions or deletions?

7 A. No.

8 Q. Okay. So otherwise it's -- the copy is the
9 same as the original?

10 A. Correct. This is my handwriting.

11 Q. I'll put this back up on the visualizer. So,
12 I'm going to back you up a little bit. Where were
13 you when you attempted a post-arrest interview of
14 Mr. Tillard?

15 A. My patrol vehicle.

16 Q. And where was Mr. Tillard?

17 A. He was in the back of my patrol vehicle.

18 Q. Were you both in the vehicle?

19 A. Yes.

20 Q. Where was he seated?

21 A. He was seated directly behind me.

22 Q. So he was seated in the back seat and you were
23 in the front seat?

24 A. Yes.

25 Q. Okay. Were there any other officers or other

1 people in the vehicle at that time?

2 A. Not at that time.

3 Q. Was the defendant handcuffed at that time?

4 A. Yes.

5 Q. Prior to speaking with the defendant, did you
6 ask him about his educational level?

7 A. I did.

8 Q. And what did he say?

9 A. He said he had a GED.

10 Q. Did you ask him whether he could read and write
11 English?

12 A. I did.

13 Q. And what was his answer?

14 A. He said he could.

15 Q. Did you ask whether he was under the influence
16 of alcohol, drugs, or other medication?

17 A. I did.

18 Q. And what was his answer?

19 A. He said no.

20 Q. Now, other than his answer no, did the
21 defendant appear at all to be under the influence
22 of alcohol, drugs, or other medications?

23 A. He did not.

24 Q. And is that something that you've been trained
25 to identify in people whether they're under the

1 influence --

2 A. Yes.

3 Q. -- as part of your experience and training?

4 A. Yes. Furthermore, I did inquire further to
5 make sure, because the comment that he made for
6 marijuana, I asked if he did ingest or take any
7 earlier that day. He did -- he said, in fact, he
8 did smoke earlier that day, however he did not feel
9 the effects of it at this time.

10 Q. Now, directing your attention back to
11 Government Exhibit 4 that also has a copy here of
12 this grand jury Exhibit 2. That is not the exhibit
13 sticker, it's this -- just for the record, it's
14 this 4 on the yellow Government Exhibit of the
15 bottom right of the document. Whose writing
16 appears on this document?

17 A. This is my writing.

18 Q. And does it appear to be in the same or similar
19 condition as when you used it on the date in
20 question?

21 A. Yes.

22 Q. Can you tell us exactly how you used this form
23 in order to advise the defendant of his Miranda
24 rights on February 25th of 2017?

25 A. Yes. I read 1 through 5 warning questions

1 verbatim as they are on the card.

2 Q. And did you read them to the defendant as they
3 appear on the form?

4 A. I did.

5 Q. Can you please read those rights you advised
6 the defendant of into the record?

7 A. Yes. You have the right to remain silent. You
8 do not have to say anything if you don't want to.
9 Anything you do say can be used against you in a
10 Court of Law. You might have the right to talk to
11 a lawyer before answering any questions and have
12 him here with you. If you can't pay for a lawyer,
13 one will be given to you before any questioning if
14 you wish. If you do wish to talk to me, you can
15 stop at any time.

16 Q. After you read the defendant the contents of
17 the exhibit, did you ask him whether he understood
18 the rights?

19 A. Yes.

20 Q. What did he say?

21 A. For waiver one he said yes. And for waiver two
22 he said yeah.

23 Q. Waiver one, do you understand what I just said
24 to you, you wrote in quotation marks yes?

25 A. Yes.

1 Q. And waiver two, with these rights in mind do
2 you agree to talk with me now, and you wrote in
3 quotes yeah. What do the quotation marks indicate?

4 A. Exactly what his response was.

5 Q. So that's verbatim?

6 A. Yes.

7 Q. Did he ask you to repeat any of the rights that
8 you read to him?

9 A. He did not.

10 Q. Did he appear confused to you regarding the
11 rights that you read him?

12 A. No.

13 Q. After the defendant indicated that he
14 understood his rights, did you ask him whether he
15 would agree to give up those rights and speak with
16 you -- I'm sorry, we already addressed that.
17 That's a waiver question two, correct?

18 A. Correct.

19 Q. And he said yeah. And you recorded those
20 responses both on the card?

21 A. Yes, ma'am.

22 Q. Did you record those at that time?

23 A. Yes.

24 Q. Now prior to asking the questions or
25 interviewing the defendant, did you make any

1 promises about potential sentencing with the
2 defendant if he spoke to you?

3 A. No.

4 Q. Did you make any statements about speaking with
5 the prosecutors about his charges in exchange for
6 his statement?

7 A. No.

8 Q. Did you talk about potential cooperation at
9 that time?

10 A. No.

11 Q. Did you threaten him in any way during the
12 course of this interview?

13 A. No.

14 Q. Did you make any physical contact with him
15 during the course of the interview?

16 A. No.

17 Q. Did he ever ask during the interview to stop
18 speaking with you or indicate he no longer wanted
19 to talk to you?

20 A. No.

21 Q. Did he ever indicate that he wanted to speak
22 with a lawyer or ask any questions about a lawyer?

23 A. No.

24 Q. Now, about how long did the total interview
25 with the defendant last if you can recall?

1 A. I believe from the start of Miranda to after
2 the written statement, about 45 minutes or so.

3 Q. Is that an estimate?

4 A. Yes.

5 Q. Can you tell us in general terms how it was
6 that you conducted the interview of the defendant?

7 A. Yes, I can.

8 Q. Please do.

9 A. So it was my decision to interview him in the
10 vehicle, which is sometimes not the standard.
11 Typically we would go to the (indiscernible), but
12 he was very eager to speak with me. Maybe prior to
13 our rapport. I felt very comfortable talking to
14 him. I believe that he did too at the time. He
15 seemed like he wanted to talk about it immediately.
16 So before that I made that decision to talk to him
17 in the car and do the Miranda card. We got right
18 into the interview without little chatter of, you
19 know, unrelated events. He told me that he saw a
20 gentleman in a black SUV that he had recognized
21 that robbed and shot him prior months. He was
22 parked in that 700 South Plymouth gas station.
23 When he saw him, he turned around the corner on
24 Doran and Edith and parked his vehicle, exited the
25 vehicle with a handgun, walked towards that SUV

1 with the intent to threaten or flash the gun -- I
2 think he used flash. In the interview he initially
3 said he said he cocked the gun, I believe his
4 verbiage was, indicating he racked the slide to see
5 if there was a round had chambered in the firearm,
6 which there wasn't. Once he realized that there
7 was no magazine and no bullets, he decided to turn
8 back around towards his vehicle, at which point I
9 think he indicated that he saw our police car.

10 He got in his vehicle and began to drive away.
11 Subsequently he made that turn down Flint Street,
12 knowing that we were going to stop him. He fled on
13 foot, and I think he used the word pitched as far
14 as meaning throwing the gun. Subsequently after --
15 after all that, we did further go into detail on
16 where he had initially gotten the gun, whether he
17 knew it was loaded, and vice versa. And he said
18 that he did. He bought the gun on Bartlett Street
19 for \$250 I believe from a male he knows as Heem.
20 He provided a Facebook name of Heem Shoota.

21 During that conversation some of it took a
22 little bit of time just because I had to clarify
23 certain words that he used, certain verbiage that I
24 never had heard of or don't use, such as when he
25 said cocking --

1 Q. Did you ask him follow up questions?

2 A. I did. Just so I could comprehend what he was
3 kind of saying. And when he said pitch I kind of
4 wanted to see what he meant by that.

5 You know, after that, I asked him if he wanted
6 to provide a written statement, and he said he did
7 want to, and that's when I returned to -- I stepped
8 out of the vehicle for a second to grab it from my
9 trunk, the actual paper of the written statement.
10 I was back in the driver's seat within seconds. We
11 began -- I believe I noted on top of that written
12 statement form when we began the actual written
13 statement.

14 Q. And is Government Exhibit 5 --

15 A. Yes.

16 Q. Do you recognize this?

17 A. I do.

18 Q. And what is that?

19 A. That is the written statement form.

20 Q. Is that the same one that you're talking about?

21 A. Yes.

22 Q. Okay. Go ahead.

23 A. So around 11:24 p.m. is when we started the
24 written statement. During this time we went
25 through the -- as chronological as possible went

1 through the events that happened throughout the
2 day. There were certain things that he did not
3 want inside that written statement, and I explained
4 to him that it was voluntary, and he could put
5 whatever he wanted as long as it's the truth. And
6 he said okay.

7 Q. So, is it fair to say that he said things in
8 the statement to you in the car, this first
9 conversation that you had --

10 A. Yes.

11 Q. -- that are then not contained in this written
12 statement?

13 A. Correct.

14 Q. And why is that?

15 A. I don't want to testify on what maybe he led
16 him not to want to put something in there.

17 Q. Let me ask a better question to clarify a
18 little bit more. Why is it that you allowed him to
19 make that decision what goes in the written
20 statement of what he just told you and not just put
21 it all in there?

22 A. Because it's his facts and his truth. So it
23 has nothing to do with my story. That's --

24 Q. Is it accurate to say that he was only willing
25 to put certain things in writing and the other he

1 only gave to you if it wasn't in writing?

2 A. Correct.

3 Q. Okay. So what's contained in this written
4 statement the defendant decided what would go in
5 here, correct?

6 A. Yes.

7 Q. This top part here I see there's a time start,
8 time finished. Did you fill that out at the time?

9 A. I did. Obviously the time of finish is when I
10 finished the conclusion of the written statement.

11 Q. Okay. And I, Robert Tillard, 32 years, this
12 part at the top, did you fill that part out?

13 A. I did.

14 Q. And this RT, I see all these rights. I have
15 the right to remain silent. I do not have to say
16 anything if I don't want to. Anything that I do
17 say can be used against me in a Court of Law. I
18 have the right to talk to a lawyer before I answer
19 any questions, and to have them here with me during
20 any questioning if I wish. But if I agree to talk
21 about this matter without a lawyer present, I can
22 stop talking at any time. Did you review those
23 with Mr. Tillard?

24 A. I did.

25 Q. How did you review those with him?

1 A. So after it was reduced into writing, there
2 came a time where he was unhandcuffed in order to
3 view -- review the statement and essentially sign
4 it. But prior to that, I gave him the opportunity,
5 something I like to do, not everybody does it, I
6 gave him the opportunity again to read prior to
7 making that signature, he still understood his
8 rights. And once he indicated that he did read it,
9 I just told him to put his initials on top of it,
10 that's so you can see the RT over that. Yes.

11 Q. The RT that is on top superimposed I suppose
12 but written directly on those rights, correct?

13 A. Right, to make a mark just to show that you
14 read it and you understand. So he did so. And
15 then I also had him initial the front, the back,
16 make any -- yep. The front.

17 THE COURT: Whose handwriting is the
18 statement?

19 THE WITNESS: The handwriting is my
20 handwriting, sir.

21 THE COURT: Why don't you let him write it
22 out?

23 THE WITNESS: I've never -- any time we've
24 ever did a written statement, just the way the
25 procedure's been, I was always taught to handwrite

1 the written statement and reduce in your own
2 writing.

3 BY MS. HARTFORD:

4 Q. Now, there's writing on this form that is not
5 yours, correct?

6 A. Yes.

7 Q. What writing is that?

8 A. Those would be his initials, his signature.

9 Q. Okay. And can you point out to the Court the
10 places where his initials appear?

11 A. Yes. So in the beginning of the narrative --

12 Q. You can touch the screen.

13 A. So the beginning of the narrative, if I cross
14 out anything like a spelling error, I usually have
15 him initial that, which I don't think I did on this
16 case. So I have him initial here, and then again
17 just the end of the narrative so nothing can be put
18 in there, reviewed or added later. I had him sign
19 or initial at the bottom as well.

20 Q. And the signature next to this X on the
21 signature line, who signed that?

22 A. Robert Tillard.

23 Q. And you mentioned that you have him initial the
24 back -- or what happened on the back?

25 A. I put that mark on the back to indicate that

1 it's the original copy.

2 Q. So opposed to having writing on the back of the
3 original, this was to indicate there was no writing
4 on the back of the original?

5 A. Yes, that and just for administrative task to
6 know which one is original and which one is a copy.

7 Q. Okay.

8 A. So once this is reduced to writing, I give him
9 the opportunity to -- at first I have him read the
10 first few lines out loud so I can understand that
11 he read and understand the language and can read
12 English. He did so. And then I had him read the
13 rest of the statement to make sure that he didn't
14 want to make any changes. He indicated that he did
15 not want to make any changes, and then I asked him
16 if he wanted to sign this written statement and
17 this is the truth, and he said yes. And he signed
18 it.

19 Q. Can you please read into the record what that
20 written statement is --

21 A. I can.

22 Q. -- that Robert Tillard adopted as his own by
23 initialing and signing it on that day?

24 A. Yes.

25 THE COURT: Not that I'm trying to

1 interrupt, but do I really care what the substance
2 of the statement is?

3 MS. HARTFORD: I guess not, Judge. We'll
4 skip forward and save a little bit of time, how's
5 that?

6 BY MS. HARTFORD:

7 Q. Can you describe the defendant's attitude and
8 demeanor throughout this interview?

9 A. Yes. You know, he was very eager to talk to me
10 again. Me and him have always been respectful to
11 each other, so it was kind of, you know -- it was
12 just a little different than any other cases I've
13 done just because we had essentially a relationship
14 before, and it was completely voluntary. He kind
15 of told me what happened and I put down exactly
16 that, you know.

17 Q. I'm going to come back to you about your prior
18 interactions with the defendant in a little bit. I
19 want to ask you some more questions specifically
20 about the interview. But that perhaps will help
21 educate his attitude and demeanor during the
22 interview.

23 Did you ask him any specific questions
24 regarding the contraband located during this --
25 this day, the marijuana and the gun?

1 A. I did ask him a question about the gun.

2 Q. About the gun?

3 A. Yes.

4 Q. And did he admit that it belonged to him?

5 A. He did.

6 Q. Okay. Now, when he signed the interview, where
7 did that take place?

8 A. He signed the written statement on the back of
9 my car. I was also present with Officer Barton,
10 who is now a sergeant during this time. He was
11 able to -- I was able to unhandcuff him, so I
12 needed another cover officer there to help me in
13 case he tried to flee or run away or something.

14 Q. Okay.

15 A. But just standard protocol, I just wanted
16 another officer with me.

17 Q. Okay.

18 A. At that time he was unhandcuffed. I used my
19 flashlight to illuminate just to make sure he could
20 have a clear view of the written statement. I
21 think he was also using prescription glasses at the
22 time which he had on, and that's where he signed
23 it.

24 Q. Okay. Now, I would like to turn your attention
25 to your use or lack thereof of body worn camera in

1 this incident --

2 A. Yes.

3 Q. -- okay. You received a counseling memorandum
4 regarding this incident, correct?

5 A. Yes.

6 Q. Specifically that you were in violation of
7 RPD's body worn camera policy?

8 A. I was.

9 Q. Was that counseling memorandum specifically in
10 relation to this day or in relation to other
11 interactions with Mr. Tillard?

12 A. This day.

13 Q. Okay. And were you wearing a body worn camera
14 on February 25th of 2017, during this interaction?

15 A. Yes. I was assigned a body worn camera. I
16 can't remember if it was actually on me or not.
17 But, yes.

18 Q. So you were assigned one, but you don't know if
19 you were wearing it?

20 A. Yes. It could have been in the -- in my car on
21 the docking station in my car or on the visor. I
22 can't remember if it was on my uniform or not.

23 Q. Okay. Did you turn it on at all during this
24 encounter?

25 A. I did not.

1 Q. And how long had you had that body worn camera
2 issued to you prior to this encounter?

3 A. Thirty days or less.

4 Q. Now, why didn't you turn it on during this
5 encounter? I think you've already mentioned you
6 don't know where it was.

7 A. Right. To be honest, I just wasn't used to it.
8 I know it's not a good excuse. Just made a
9 mistake. And we went almost four years, you know,
10 driving -- being a police officer on a day-to-day
11 basis without body cams. This was one of the first
12 events that I've ever had essentially like a foot
13 chase involved where I would have to think fast to
14 turn my body cam on, and activate it, and put it on
15 my uniform. And just didn't, didn't even -- didn't
16 even think about doing it, unfortunately. In
17 hindsight I wish I did.

18 THE COURT: Did your partner have it on?

19 THE WITNESS: I believe his circumstances
20 were the same as mine. So we work in the same
21 section, so we were all issued them at the same
22 time. There was for this instance, it wasn't
23 disciplinary. It was a training counseling
24 memorandum that basically just said that you
25 require more training, which is true, because if I

1 didn't I would have had it activated. So since
2 then -- like I've learned from my mistakes, and
3 since then I've never had any issues with
4 activating my body cam, nor have I had any
5 complaints. In fact, the department will do random
6 audits on our body cams, and since then I've been
7 in a hundred percent compliance.

8 BY MS. HARTFORD:

9 Q. I'd like to ask you a little bit about your
10 interactions -- the history of your interactions
11 with the defendant.

12 A. Okay.

13 Q. So safe to say that February 5th, 2017, was not
14 your first interaction with Mr. Tillard?

15 A. That is correct.

16 Q. When's the first time that you recall coming
17 into contact with the defendant?

18 A. It was in August, I believe, 2016. I responded
19 to a shots fired activation in the area of Bartlett
20 and Reynolds Street, which is very close and nearby
21 where this incident occurred. He ended up -- I
22 ended up locating him with a gunshot wound to his
23 foot. So he was a victim of a gunshot wound.

24 Q. Okay. Were you the lead officer on that, do
25 you recall?

1 A. I believe I was the first responding officer,
2 but the area in which it happened occurred under
3 another officer's beat, so he took the primary
4 report I believe.

5 Q. Okay. So what happened as a result of that
6 interaction when he was shot in the foot?

7 A. During that interaction, you know, he was
8 ultimately uncooperative as far as who the suspects
9 were. And as they were talking to him, we did
10 make, you know, some type of rapport prior to him
11 getting out of the ambulance. And I asked him, you
12 know, listen, if there's anything that we can know
13 or do to help you out in the past, and next in
14 trying to locate these guys that shot you, then I
15 will help you. So that kind of went and segued
16 into the next time we saw each other, I asked him
17 if he had further knowledge of what happened, and
18 he did. He was more forthcoming. He did identify
19 a couple people, not by name, but mostly where they
20 hung out and their locations and descriptions of
21 them. And I continued to do follow-ups with them
22 throughout my day-to-day course of police business.
23 And I did identify a certain individual that I
24 believe was involved in this whole thing that
25 happened. And mostly our relationship was built on

1 the fact that he was a victim of something and I
2 wanted to help him.

3 Q. You said, you know, you'd follow up with him,
4 you'd see him? How is it that you would follow up
5 with him?

6 A. Well, he lives on Bartlett Street, which is one
7 of the main like corridor streets that we travel
8 down.

9 Q. Is that in your beat?

10 A. That is directly in my beat.

11 Q. Okay. So it's someplace you travel frequently?

12 A. Multiple times throughout the shift.

13 Q. Okay. Go ahead.

14 A. During that time he lives actually right there
15 on 23 Bartlett Street, and I would see him outside
16 of his car or sitting in his car in front of the
17 driveway almost everyday. Sometimes, you know,
18 some of our interactions wasn't criminal nature at
19 all. Mostly, hey, how are you doing, and keep
20 driving by. Just community. But there was certain
21 times where he was subject of a traffic stop, which
22 I was involved in.

23 Q. Do you recall how many times there were traffic
24 stops that you were involved in with this
25 defendant?

1 A. I don't know the exact amount of times, but it
2 was a handful of times.

3 Q. More than once?

4 A. Oh, yeah.

5 Q. Okay. I just thought of something that I don't
6 think I asked you, so I'm sorry I'm jumping around
7 a little bit. I asked if originally when you saw
8 the defendant driving a car if you could see if
9 there was anyone in the passenger seat.

10 A. Okay.

11 Q. Did you, when he stopped the car and ran from
12 the car, did you learn whether there was anybody in
13 the passenger seat?

14 A. I did.

15 Q. And who was that?

16 A. So I actually went back to the car to secure it
17 because it was by itself obviously. That's when I
18 identified there was a passenger in the seat which
19 took me by surprise. End up being Sherry Kitchens,
20 who I learned to be the baby mother of Robert
21 Tillard.

22 Q. Now, did you issue any traffic tickets in this
23 case?

24 A. I personally did not write tickets.

25 Q. Were you aware of anybody else did?

1 A. I did.

2 Q. I don't want you to get too into it, because,
3 again, we'll have that officer testify personally
4 to what he did. But do you know who issued those
5 tickets?

6 A. Yes.

7 Q. And who was that?

8 A. Officer Giancursio.

9 Q. Okay. Are you personally aware of whether
10 Miss Kitchens has a driver's license or not?

11 A. I'm personally not aware. I do vaguely
12 remember learning that night -- I can't remember
13 who ran her license, but I believe it was expired.

14 Q. Okay. But you're not sure, because you didn't
15 do it?

16 A. I didn't do it.

17 Q. Okay. I want to avoid things that you don't
18 have personal knowledge of.

19 A. Okay.

20 Q. But I did want to cover that point.

21 A. Yes. Okay.

22 Q. So back to prior infractions, you had prior
23 traffic stops of the defendant, correct?

24 A. Correct.

25 Q. And approximately -- you said a handful of

1 traffic stops with the defendant?

2 A. Yes.

3 Q. Okay. Did you issue any tickets on those prior
4 incidents?

5 A. I don't think any tickets were issued on those.

6 Q. Okay. Why not?

7 A. At least I didn't write any tickets on those.

8 Q. Okay.

9 A. So to clarify, I wasn't always the first one to
10 stop him or -- another officer could stop him and I
11 would assist. They may have written tickets. Just
12 by discretion. Essentially, just by discretion and
13 no -- and like I said, I was -- my intent was to
14 help him out, you know, to really figure out what
15 was going on, who was potentially robbing and
16 shooting at him. Because apparently I learned that
17 it wasn't the first time that he was robbed by
18 these same individuals. And I didn't want it to be
19 a punitive thing where you're writing a ticket
20 every single time you stop him either. But at the
21 same time, if it's a violation and I can help by
22 using our discretion, I did so.

23 Q. Had you -- I'm trying to think. Had you
24 stopped him with marijuana --

25 A. Yes --

1 Q. -- during some of those interactions?

2 A. -- I have.

3 Q. And did you arrest him for marijuana on any of
4 those incidents?

5 A. I did not.

6 Q. Why not?

7 A. Well, at the -- legally, obviously being able
8 to seize marijuana is my discretion whether I would
9 turn it in for evidence or safekeeping and
10 destruction. And, you know, the marijuana that we
11 found was nothing of high quantity, so, again, it
12 was discretionary and my decision to take it, you
13 know, turn it in for destruction.

14 Q. Is that something that you do with regard to
15 other individuals too?

16 A. All the time.

17 Q. All the time. So this isn't unique to
18 Mr. Tillard?

19 A. No.

20 Q. Is this something that came up during the
21 course of the PSS investigation?

22 A. I believe it did.

23 Q. And you testified -- or you told them
24 similarly?

25 A. Correct.

1 Q. Okay. You said it wasn't high quantity of
2 marijuana. Was it indicative of individual use or
3 distribution as far as the quantity goes?

4 A. Based on my training and experience I would
5 certainly say distribution.

6 Q. Okay. So even though it wasn't high quantity,
7 it still was more than you would attribute to
8 personal use?

9 A. Correct.

10 Q. Okay. Did you ever contact Mr. Tillard via
11 telephone or text message?

12 A. I did, yes.

13 Q. Okay. Approximately how many times did you
14 contact him by a text message?

15 A. It wasn't many times. I can't remember exactly
16 how many.

17 Q. Okay. Do you recall whether he gave you his
18 cellphone number?

19 A. Yes, he did.

20 Q. Okay. Did he respond to you when you texted
21 him, if you recall?

22 A. I honestly don't recall.

23 Q. Okay. Did you use your personal phone or an
24 RPD phone to conduct those text messages?

25 A. I used my personal phone.

1 Q. And why didn't you use an RPD phone to do that?

2 A. I just -- I should have, but I just used my
3 phone. I know some guys have different phones
4 separate from work. But I've always my personal
5 phone.

6 Q. Is that how you handle other potential
7 cooperators?

8 A. I do.

9 Q. So it wasn't unique to Mr. Tillard?

10 A. No.

11 Q. As far as his potential as a cooperator, was
12 that something he indicated he wanted to do?

13 A. Yes.

14 Q. Can you tell us a little bit about that?

15 A. Yes. So during this time I was kind of in the
16 infancy stages of learning how you could actually
17 use a confidential informant through like our
18 special investigation section, use them actually as
19 a paid informant. At this point it was more so
20 just him helping me try to help himself as far as
21 finding somebody on the street. There was more to
22 talk about him doing further, but that was never
23 anything that I really had the ability to do on a
24 patrol level. So it didn't really go too far. But
25 that was discussed.

1 Q. Okay. So that was something that Mr. Tillard
2 was interested in but it never got to that point,
3 is that correct?

4 A. Correct.

5 Q. Just a little bit of housekeeping here. I
6 didn't end up using these as demonstrative aids
7 because I think that the map did the job. But I
8 want these to be clear on the record what they are.
9 Government Exhibit 1A, what is this view?

10 A. Essentially this is an overall view of the
11 Flint Street where it goes into that dead end and
12 off of Exchange Street.

13 Q. So is this at the corner of Flint and Exchange?

14 A. Yes.

15 Q. Are you able to see on this map approximately
16 where it was that the defendant finally pulled his
17 car over?

18 A. You cannot see it on this map.

19 Q. Okay. I'm going to show you Government
20 Exhibit 1B. What are we looking at here?

21 A. Okay. Essentially it's the same photograph
22 looking down the same direction on Flint Street.

23 Q. Is it a little bit farther down Flint Street?

24 A. A little bit further down Flint Street, yes.

25 Q. Are you able to see where he stopped his car on

1 this photograph?

2 A. You can partially see some of the stony loose
3 gravel to the right of the road.

4 Q. Okay. Are you -- can you circle that on the
5 screen, please?

6 A. Yes.

7 Q. You placed a red dot. It looks like it's kind
8 of across the street from that second building on
9 the left, the darker reddish brick one, is that
10 correct?

11 A. That is correct.

12 Q. Government Exhibit 2, what are we looking at
13 here?

14 A. That is the firearm that was located in the
15 field where he was taken into custody.

16 Q. Now, again, are you the one who located that
17 firearm?

18 A. Officer Giancursio.

19 Q. But did you see it after he located it?

20 A. I did.

21 Q. And is that how it appeared at that time on
22 that day?

23 A. Yes.

24 Q. Did you see anybody touch it or move it prior
25 to seeing it?

1 A. I did not.

2 Q. Did you take this photograph?

3 A. I did not.

4 Q. Government Exhibit 3, what are we looking at
5 here?

6 A. Essentially it's another overall photograph of
7 the firearm in the snow.

8 Q. You mentioned it's in the snow. Is there any
9 snow on top of that firearm?

10 A. No, there's not.

11 Q. Okay. Is there a magazine in that firearm?

12 A. There is not.

13 Q. Okay.

14 MS. HARTFORD: I believe those are all my
15 questions, your Honor.

16 THE COURT: Okay. When you said you and
17 your partner Officer Giancursio --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- were issued the body
20 cameras around the same time?

21 THE WITNESS: Yes, sir.

22 THE COURT: Had you worn yours previously
23 to that?

24 THE WITNESS: I have. We are supposed to.
25 Once they were issued, yes.

1 THE COURT: It was just this particular
2 day you didn't put it on?

3 THE WITNESS: Just to be honest, it was
4 honestly towards the end of the night, and maybe we
5 both were just -- I really don't know what his
6 excuse was. Just honestly it was just a mistake.
7 I think I can definitely tell you that this was the
8 first incident that I can remember having a body
9 worn camera that resulted in more like a stressful
10 environment, you know, foot chase and thinking
11 quickly. This was definitely my first time having
12 to adapt to that.

13 THE COURT: I'm just trying to -- of the
14 30 days that you worked or approximately worked
15 before the date of this incident, how many days
16 would you have worn the body wire camera?

17 THE WITNESS: I was on a four-two wheel at
18 that time. It could have been probably maybe 10,
19 11 shifts.

20 THE COURT: Okay. And you'd wear it each
21 time. This was unusual for you not to put it on?

22 THE WITNESS: Correct.

23 THE COURT: Okay. And how about your
24 partner, was he kind of wearing it all the time
25 too?

1 THE WITNESS: It would be probably be
2 around the same exact scenario.

3 THE COURT: Okay.

4 THE WITNESS: Like I said, not to -- sorry
5 if it's confusing.

6 THE COURT: Sure.

7 THE WITNESS: I very well could have had
8 it on my body.

9 THE COURT: Just didn't turn it on?

10 THE WITNESS: Just didn't activate it.

11 THE COURT: What's the rule as to when
12 you're supposed to turn it on, when you get out of
13 the car?

14 THE WITNESS: The rule -- that's a good
15 question, because right at that point nobody really
16 knew clearly the answer to that. And at the time I
17 believe it was just when you're having contact with
18 a prisoner, and it's only got to be outside. It
19 cannot be any police buildings. There's certain
20 criteria. So to avoid that, afterwards, at any
21 point in time I would just turn it on if I got out
22 of the car.

23 THE COURT: Okay. So generally if you got
24 out of the car you turned it on. Would it be on
25 normally when you were in the back of the car

1 interviewing somebody?

2 THE WITNESS: That's a very good question
3 too.

4 THE COURT: I only ask really good
5 questions.

6 THE WITNESS: Thank you for clarifying
7 this. So to answer your question, I actually --
8 had I gone to the public safety building to
9 interview him, I would be unable to use my body
10 worn camera. It would be a violation of the RPD
11 policy --

12 THE COURT: Okay.

13 THE WITNESS: -- to use body worn camera
14 to interview him with it inside the Post 8
15 building. Also, in addition to that, there was no
16 policy yet, especially that I was aware of, where
17 you could do a custodial interview with your body
18 worn camera at that point, because they were so
19 new. There now is a system in place and a form we
20 can do now at this point two years later, however
21 at that time there was not. And I know based on
22 our policy before that we're not required by our
23 department to interview somebody for a gun arrest.
24 It has to be something higher such as an A1 felony.

25 THE COURT: Okay.

1 THE WITNESS: So in that circumstance I
2 wanted to avoid getting in trouble in that regard,
3 because turning it on I thought maybe I would be
4 violating the policy in that regard.

5 THE COURT: So you ordinarily would not
6 turn your body worn camera on interviewing somebody
7 in the back --

8 THE WITNESS: No. That would be very --

9 THE COURT: It would be similar to
10 interviewing him in a police department building?

11 THE WITNESS: Correct.

12 THE COURT: And you thought those rules
13 would apply.

14 THE WITNESS: Correct. And free to do
15 that, I would need supervisor permission, and it
16 would be very unordinary.

17 THE COURT: Okay. Thank you. I don't
18 have anything further.

19 MS. HARTFORD: Okay. Thank you.

20 THE COURT: Okay. We are going to excuse
21 you now. We're going to hold up cross-examination.
22 I can't tell you when it's going to be, but it's
23 not going to interfere with your service.

24 THE WITNESS: Okay.

25 THE COURT: So I think the chances are

1 pretty good it's not going to be until you get back
2 from -- in May.

3 THE WITNESS: Okay.

4 THE COURT: I'm sure the government will
5 order the transcript so you'll be able to see what
6 you testified in direct examination, because I know
7 that's a long time from now.

8 THE WITNESS: Okay.

9 THE COURT: So I don't think you'll be
10 prejudiced in any way. Good luck with your
11 service. Thank you.

12 THE WITNESS: Thank you, appreciate it.

13 THE COURT: Where are you headed?

14 THE WITNESS: Fort Benning, Georgia.

15 THE COURT: Okay. Thank you.

16 THE WITNESS: Thank you.

17 MS. HARTFORD: Your Honor, if I may, just
18 one point regarding scheduling.

19 THE COURT: Sure.

20 MS. HARTFORD: I don't know -- my due date
21 is March 26th, and I anticipate taking some time or
22 off for maternity leave after that. I believe I'll
23 be back by July. I haven't gotten permission from
24 my office yet. I don't know what those dates will
25 be. I wanted to make the Court aware of that. I

1 don't know -- I guess once we have a date, we'll
2 figure it out. I don't know if another attorney
3 can substitute in in a middle of a hearing or what
4 not. We'll address that. I just wanted the Court
5 and defense to be aware of my --

6 THE COURT: My experience has been where
7 the defendant's out of custody, you're not
8 necessarily interested in scheduling something just
9 to schedule it. That you would be satisfied if it
10 was later.

11 MS. ZOGHLIN: Yes, that would generally be
12 true, yes.

13 THE COURT: Okay. So I'm not going to
14 worry about it unless the defense worries about it.
15 We have some work to do -- or you have some work to
16 do along with defense counsel in making sure you
17 have everything and then deciding what you want to
18 share, if anything, and what you don't want to
19 share. If that can be done, you know, before
20 Officer Minurka leaves, I'm happy to schedule
21 something that first week of January. But if it
22 can't be done, I think we'll just have to wait and
23 see after he gets back what everybody's doing,
24 okay?

25 MS. HARTFORD: Okay.

1 MS. ZOGHLIN: Okay. Thank you.

2 THE COURT: Thank you.

3 MS. HARTFORD: Would you like me to hold
4 onto the exhibits?

5 THE COURT: Yeah. Until we close the
6 hearing, yeah. Thank you.

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CERTIFICATION

I certify that the foregoing is a
correct transcription, to the best of my
ability, from the electronic sound recording
of the proceedings in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Court Reporter